Filed 2/6/03 In re Billy C. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re BILLY C., a Person Coming Under the Juvenile Court Law.	B156829 (Los Angeles County Super. Ct. No. JJ09519)
THE PEOPLE, Plaintiff and Respondent, v. BILLY C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Kirkland H. Jones, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed with directions.

Mark S. Givens, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Kenneth N. Sokoler and Jonathan J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

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The juvenile court sustained one count of assault with a deadly weapon or by means likely to produce great bodily injury in a petition filed against minor Billy C. (Pen. Code, § 245, subd. (a)(1).)[1] The juvenile court found true the allegations that, in the commission of the assault, minor used a dangerous and deadly weapon (a broomstick) within the meaning of section 12022, subdivision (b)(1). The juvenile court declared the minor a ward of the court and stayed an order of camp community placement. The juvenile court placed minor at home under terms and conditions of probation.

On appeal, the minor contends: (1) there was insufficient evidence to sustain the charge of assault with a deadly weapon by means likely to produce great bodily injury; (2) minor was denied the right to due process by never being notified of the identity of the victim he was convicted of assaulting; and (3) the juvenile court imposed vague and overbroad conditions of probation.

FACTS

At approximately 3:15 a.m. on October 7, 2001, Los Angeles Police Officer Patrick Fitzgerald (Fitzgerald) responded to a radio call about an occurrence at the intersection of 47th Street and Halldale Avenue. He saw a group of young male Hispanics on the corner. As Fitzgerald approached, some of the men ran west on 47th Street and three stayed on the corner. Of the three remaining, one was later identified as a victim, David Cherinos (Cherinos). Another was an adult who was later arrested, Ivan Bardelas. The third was a witness, Miguel Hernandez (Hernandez).

Olman Vasquez (Olman) and his wife, Jessica Vasquez (Jessica), approached Fitzgerald and explained that Cherinos and Olman had been assaulted.[2] Olman had been robbed, and Cherinos had been hit with a pipe and a bat. Another victim was named Ontiveros. Fitzgerald had to communicate with the victims through Jessica because Fitzgerald did not speak Spanish and Jessica was the only English speaker. It was apparent to Fitzgerald that Jessica was fluent in both languages.

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1 All further statutory references are to the Penal Code unless otherwise indicated.

2 To avoid confusion we use first names to identify the Vasquez couple.

Ontiveros and his wife, who were also at the scene, told Fitzgerald that they saw one of the people involved in the assault standing in front of a house on 57th Street that was five or six houses from the corner. Six or seven minutes after arriving at the scene, Fitzgerald went to that house, and a resident allowed him and three other officers to conduct a search. The officers found four juveniles in a bedroom. They were lying in a bed and on the floor. They were dressed in underwear. An adult was found in bed in another bedroom.

The officers asked the juveniles to step outside for a field showup. One of the juveniles was the minor. The witnesses viewed the suspects individually. Hernandez told Fitzgerald that the minor was one of the juveniles involved in the attack on Olman and Ontiveros. Hernandez said that the minor stepped out of a vehicle carrying a broomstick that he used to hit Ontiveros on the head and shoulders. Olman also told the officers that the minor was one of the juveniles involved in robbing him. The minor was one of the men that was striking and kicking him during the robbery. Olman lost rings, a necklace, and a wallet in the attack.

A search of the house yielded three rings; two in the bedroom where the four juveniles had been, and one in the room where the adult had been. Olman identified the rings as his property at the field showup.

At the adjudication hearing for the minor and a codefendant, Hernandez testified that he saw six to eight men attacking Olman from approximately a half block away. As he ran towards them, he saw the men all kicking Olman. The men were Hispanics of approximately 18 years of age. Hernandez did not see any weapons at that time. When Hernandez and Cherinos got to the scene of the attack, the men ran away. They returned in approximately five minutes to attack again. Cherinos was hit with a plastic pipe. At that point, Hernandez became involved in a fistfight with the attackers. One of them had a broomstick. Hernandez said that the man with the broomstick forcefully hit Cherinos with the stick and broke it. Then he took off running.

Hernandez testified that he was not sure he could recognize the attackers at the hearing because of the length of time that had passed. He testified that he recalled seeing

the minor at the scene of the attack, but not the minor's codefendant. He stated that the minor was with the men that were fighting Cherinos. When asked if the minor was fighting Cherinos, Hernandez stated, "Yes," but went on to say, "I don't know the other person, but he was fighting with another person that -- I don't know who that is." Hernandez denied that the minor was the person with the broomstick. Hernandez said the minor was at the attack scene both times. When asked if he had seen the minor hit Cherinos, Hernandez said, "Yes. He came by with the car. He came by with the ones that were in the car."

Olman testified he recalled being hit on the back of his head as he walked to the corner. He believed six to eight people hit him. He did not see anyone with a broomstick or plastic pipe. He did not see any of his attackers. He did not recall identifying two of the individuals to Fitzgerald. He could not identify the minor and his codefendant at the hearing.

Matthew Jacobik (Jacobik), a Los Angeles police officer, testified that he showed Olman two rings found in the house on 47th Street, and Olman identified them as his. Jacobik found one ring in the pants pocket of the adult suspect in the house.

DISCUSSION

I. Sufficiency of the Evidence to Sustain Count 1

The minor contends that, given the evidence adduced in his case, no reasonable trier of fact could have found that he committed the assault charged in count 1 and that he used a broomstick in this assault. The minor claims that the dearth of evidence in support of the charge amounted to a denial of due process.

With respect to count 1, which charged the minor with assaulting Cherinos, he points out that Olman testified he did not recognize the minor as one of the assailants. Hernandez testified minor was not fighting with Cherinos, but rather with someone else whom Hernandez did not know.

According to the minor, the only evidence that pointed to him was the testimony of Fitzgerald, which was unreliable hearsay. Fitzgerald had no personal knowledge of what occurred and had been obliged to rely on the lay translation of Jessica. Her

translation was unreliable in light of the testimony by Olman and Hernandez, and it should not have outweighed the substantial evidence consisting of the testimony of these two witnesses. Finally, the minor points to the fact that the person whom the minor was found to have assaulted remained unnamed and unknown.[3]

With respect to the weapons allegation, the minor argues that neither Olman nor Hernandez identified the minor as the one with the broomstick. Olman did not remember anything, and Hernandez testified that the minor was not the person who used the broomstick and took Olman's watch.

"'The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]'" (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) "'Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]' (*People v. Jones* (1990) 51 Cal.3d 294, 314.)" (*Ibid*.)

After careful review of the record, we conclude the juvenile court properly sustained count 1 and the weapon allegation.

First, with respect to the translation by Jessica, we conclude the trial court's acceptance of Fitzgerald's testimony that Jessica was fluent in English and Spanish was reasonable. The minor's argument does not challenge the admissibility of the evidence, but rather its weight. Jessica had no motive to mislead the officer, and there is no reason

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3 As discussed *infra*, at the close of evidence the juvenile court amended the petition by crossing out the name of Cherinos as the victim.

to believe the translation is inaccurate under the totality of the circumstances. (See *People v. Torres* (1989) 213 Cal.App.3d 1248, 1258-1259.)

Apart from Fitzgerald's testimony, however, the minor was named as one of the attackers by Hernandez. Even if that portion of Fitzgerald's testimony that identified the minor as Cherino's attacker is discarded, there is substantial evidence to support the juvenile court's finding that the minor was guilty of participating in an assault by means likely to produce great bodily injury.

At the close of argument, the juvenile court found that the minor was fighting with someone other than the named victim, Cherinos. The juvenile court pointed out that Hernandez "did in fact identify [minor] as being there. And in fact he identified [minor] as fighting with someone. He said it was somebody else. [¶] But at the time that he identified this young man, he identified him to the police officer. [Minor] was one of the juveniles. He had a broomstick, and he was beating Ontiveros about the head and shoulders with this broomstick. [¶] Now, that's what I have written here. Maybe they got the names wrong in terms of who is alleged here. It really is immaterial. He did say that to the police. And in fact his testimony was that he didn't see [minor] beating up David Cherinos. He saw him beating up somebody else. So that is sufficient to sustain this petition and his use of the broomstick." Later the juvenile court reiterated that it was relying on Hernandez's testimony that the minor did assault someone other than Cherinos for sustaining count 1. We agree with the juvenile court that Hernandez's testimony is sufficient to sustain the allegation in count 1.

The juvenile court's finding that the minor used a broomstick is also reasonable. For sustaining the weapon allegation, the juvenile court stated it was relying on Fitzgerald's testimony that Hernandez identified the minor as the one with the broomstick. Fitzgerald testified that Hernandez told him at the field showup that the minor "stepped out of a vehicle carrying a broomstick, which he used to hit Ontiveros on his head and shoulders." Under cross-examination, Fitzgerald said that Hernandez said he saw the minor attack Olman and, later, Ontiveros.

Hernandez testified at the hearing that he saw someone with a broomstick. He said that the man with the broomstick hit Cherinos with force, causing the broomstick to break into pieces. Hernandez acknowledged making an identification during the field showup, but he was not sure he could recognize the men at the time of the hearing. He testified that the one with the broomstick was wearing a white shirt and wine-colored shorts, but that man was not in court. Although he recognized the minor as being one of the participants in the attack, he stated that the minor was not the man who had the broomstick, the same man Hernandez saw stealing Olman's watch. Hernandez denied that he identified the minor at the field showup as being the one with the broomstick.

After the juvenile court sustained count 1, defense counsel argued that the witness (Hernandez) clearly stated that the minor did not have the broomstick. The juvenile court replied that Hernandez did in fact identify minor as being there and fighting with someone other than Cherinos. And, at the field showup, Hernandez identified the minor to police officers as having a broomstick and beating Ontiveros about the head and shoulders with it. Defense counsel pointed out that Hernandez's testimony at the hearing was in conflict with what the officer said Hernandez told him. The juvenile court reiterated that Hernandez specifically identified the minor in juvenile court as fighting someone (other than Cherinos), and he told the police at the field showup that the minor was beating Ontiveros with the broomstick. When defense counsel argued that Hernandez admitted he was mistaken about some of the identifications he made, the juvenile court stated: "I'm satisfied with what I just sustained. . . ."

The juvenile court clearly found Fitzpatrick's testimony regarding Hernandez's identification of the broomstick-wielder more credible and reliable than the testimony of Hernandez on that point. "It is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be resolved by the trier of fact who is the sole judge of the credibility of the witnesses. It is well settled in California that one witness, if believed by the jury, is sufficient to sustain a verdict. To warrant the rejection by a reviewing court of statements given by a witness who has been believed by the trial court or the jury, there must exist either a physical impossibility that

they are true, or it must be such as to shock the moral sense of the court; it must be inherently improbable and such inherent improbability must plainly appear. [Citations.]" (*People v. Ozene* (1972) 27 Cal.App.3d 905, 910; accord, *People v. Watts* (1999) 76 Cal.App.4th 1250, 1258-1259.)

An out-of-court identification can be sufficient to support a conviction, even if the witness is unable to positively identify the defendant at trial. (*People v. Cuevas* (1995) 12 Cal.4th 252, 257, 272.) Any apparent uncertainty or discrepancy in the testimony of a witness simply presents evidentiary issues for the trier of fact to resolve. (See, e.g., *People v. Hill* (1998) 17 Cal.4th 800, 849 [alleged inconsistencies in witness's identification of defendant are "merely discrepancies in the evidence the jury considered and resolved against defendant"]; *People v. Allen* (1985) 165 Cal.App.3d 616, 623 ["Weaknesses and inconsistencies in eyewitness testimony are matters solely for the jury to evaluate"]; *People v. Fagalilo* (1981) 123 Cal.App.3d 524, 530-531 [weaknesses and inconsistencies in witness's identification testimony for jury to evaluate].)

Under the circumstances of this case, there is an out-of-court identification that occurred immediately after the assault, and an in-court denial of that identification. Hernandez admitted his memory had dulled due to the passage of time since the incident. The juvenile court, as trier of fact, clearly gave more credence to the testimony by the police officer regarding Hernandez's statements on the night of the attack. This evidence was neither beyond belief nor physically impossible. We conclude substantial evidence supports the juvenile court's true findings on count 1 and the accompanying weapon allegation.

II. Due Process Implications of Assault Victim Remaining Unidentified

The minor argues there was no evidence he assaulted Cherinos and the juvenile court erred in crossing out Cherinos's name as the victim and ruling that the identity of the victim is immaterial. He argues that due process required that he have adequate notice of the charges against him. The minor cites *In re Robert G.* (1982) 31 Cal.3d 437 (*Robert G.*) for the proposition that he cannot be adjudged a ward on the basis of a finding that he committed an offense that was not specifically charged in the accusatory

pleading nor necessarily included in the charged offense unless the minor consents to a finding on the substituted charge. (*Id*. at p. 445.) According to the minor, the juvenile court lacked jurisdiction to adjudicate him on the "new" charge of assault with a deadly weapon on some unknown victim, which was added after the close of all evidence. The minor contends the juvenile court's ruling made preparation of a defense impossible, and reversal on count 1 and dismissal of the petition is required.

In adult criminal proceedings, absent a showing of substantial prejudice to the rights of a defendant, section 1009 authorizes the trial court, "at any stage of the proceedings," to permit an amendment to the information "for any defect or insufficiency." (See also *People v. Jones* (1985) 164 Cal.App.3d 1173, 1178.) "In juvenile cases the provisions of the Code of Civil Procedure, not the Penal Code, apply to amendment of the petition (Welf. & Inst. Code, § 678; Cal. Rules of Court, [former] rule 1309(b)), so long as those provisions comport with due process." (*In re Man J*. (1983) 149 Cal.App.3d 475, 480-481 (*Man J*.).) Currently, California Rules of Court, rule 1407(c) governs amendments to juvenile petitions, and it provides that section 469 of the Code of Civil Procedure applies to such amendments. As noted, the California Supreme Court, in *Robert G.*, *supra*, 31 Cal.3d 437 reconciled the liberal civil rules with the requirements of due process. The court limited amendments of the charged offense to necessarily included offenses or offenses expressly pleaded in the allegations. (*Man J*., at p. 481.)

We conclude that the minor's complaint is not governed by *Robert G*. The petition in *Robert G.* charged the minor with assault with a deadly weapon in violation of section 245, subdivision (a) in the following manner: "'assault upon [a victim] with a deadly weapon, to wit, a rock, and by means of force likely to produce great bodily injury, thereby violating § 245(a) [of the Penal Code], a Misdemeanor.'" (*Robert G.*, *supra*, 31 Cal.3d at p. 439.) The evidence showed that the minor had thrown two rocks, one of which struck a school custodian in the back. After the minor rested without presenting evidence, the court granted a prosecution motion, over the minor's objection,

to amend the petition to allege battery, in violation of section 242. The court sustained the petition on that basis. (*Robert G.*, at pp. 439-440.)

The Supreme Court reversed the order of the juvenile court, holding: "We conclude that a wardship petition under [Welfare and Institutions Code] section 602 may not be sustained upon findings that the minor has committed an offense or offenses other than one specifically alleged in the petition or necessarily included within an alleged offense, unless the minor consents to a finding on the substituted charge." (*Robert G.*, *supra*, 31 Cal.3d at p. 445.)

In the instant case, the minor was charged with, and found to have committed, a violation of section 245, subdivision (a)(1), which punishes "an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury . . . ." The difference between *Robert G.* and a case like the minor's was demonstrated by the court in *Man J.*, *supra*, 149 Cal.App.3d 475. Man J. was charged with vandalism of cars belonging to S. Wagner, in violation of section 594. (*Man J.*, at p. 478.) The evidence showed that the cars actually belonged to other people. (*Id*. at pp. 478-479.) The court upheld an amendment reflecting the facts supporting the charge and distinguished *Robert G*. (*Man J.*, at pp. 479-480.) The court stated: "Here, unlike *Robert G*. and the other cases relied on by appellant, the petition was amended not to charge a new offense, but to change the factual allegations supportive of the offense charged." (*Ibid.*) By analogy to section 1009 in adult criminal proceedings, *Man J*. concluded that the juvenile court retains discretion to permit amendment of a petition to correct the factual allegations supportive of the offense charged when the nature of the charge remains unchanged. (*Man J.*, at p. 481.)

The minor's case more closely resembles the circumstances in *Man J.*, *supra*, 149 Cal.App.3d 475 than the situation discussed in *Robert G*. The allegations of the petition informed the minor that he was charged with assault with a deadly weapon, by means

likely to produce "GBI," in violation of section 245, subdivision (a)(1),[4] upon Cherinos with a deadly weapon, i.e., a broomstick, and by means of force likely to produce great bodily injury. The elements that must be proved in this crime are that a person was assaulted[5] and that the assault was committed with a deadly weapon or instrument or by means of force likely to produce great bodily injury. (§ 245, subd. (a); CALJIC No. 9.00.)

In *People v. Griggs* (1989) 216 Cal.App.3d 734, 739-740 (*Griggs*), the court held that that the naming of a particular victim is not an element of assault with a deadly weapon. (*Id*. at p. 742.) Construing the phrase "assault upon the person of another" contained in section 245, subdivision (a)(2), *Griggs* stated: "To understand what constitutes the 'person of another' for our purposes, we focus on the actions of the defendant. The victim's fear, lack of fear, injury, or lack of injury are not elements which need to be proved or disproved. All that is necessary is that there is a victim; the characteristics of the victim are not critical elements of the offense. The law is seeking to punish the reckless disregard of human life, and what needs to be shown is that a human life was threatened in the manner proscribed in sections 245 and 240. . . ." (*Griggs*, at p. 742.)

Griggs further concluded that, in the circumstances of that case, the absence of a named victim did not deny the defendant his constitutional right to due process of law.

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4 Section 245, subdivision (a)(1) provides in pertinent part: "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, . . ."

5 To find an assault it must be shown that: "1. A person willfully [and unlawfully] committed an act which by its nature would probably and directly result in the application of physical force on another person; [¶] 2. The person committing the act was aware of facts that would lead a reasonable person to realize that as a direct, natural and probable result of this act that physical force would be applied to another person; and [¶] 3. At the time the act was committed, the person committing the act had the present ability to apply physical force to the person of another." (CALJIC No. 9.00)

(*Griggs*, *supra*, 216 Cal.App.3d at pp. 742-743.) *Griggs* stated: "Due process is satisfied in this case. There was no question which of defendant's acts was the basis for the assault with the deadly weapon. The testimony at the preliminary hearing, combined with the information, clearly informed defendant of the charges he was facing and the facts underlying these charges. He was not taken by surprise, and there was sufficient specificity to bar any later prosecution for the same offense. This is not to say that the People need not name a victim whenever they charge an assault with a deadly weapon. In those cases where further specificity is reasonably possible, such should be provided. . . ." (*Id*. at p. 743.)

It is true that *People v. Christian* (1894) 101 Cal. 471 (*Christian*), cited by the minor, held that the name of the person assaulted is a material element of the offense of assault. (*Id.* at p. 473; see *Griggs*, *supra*, 216 Cal.App.3d at pp. 740-742.) *Christian*, however, was concerned with the particular stage of the criminal process that occurs between the complaint and the information in adult proceedings. That court's broad statement regarding the crime of assault must be considered in the context of the perceived error that *Christian* set out to remedy. Moreover, the reasoning that led the *Christian* court to state that the name of the victim was an element of assault was later disapproved in *People v. Lee Look* (1904) 143 Cal. 216 (*Lee Look*).

In *Christian*, the complaint before the magistrate charged the defendant with an assault on one George *Magin*. (*Christian*, *supra*, 101 Cal. at p. 472.) At the conclusion of the preliminary examination, the magistrate entered an order of commitment stating, "'It appearing to me that the offense of an assault with a deadly weapon, to wit, a pistol, had been committed, and that there is sufficient cause to believe that the within named Harry Christian . . . guilty thereof, I order that he be held to answer to the same.'" (*Ibid*.) The subsequent information charged Christian with assault on one George *Massino*, and Christian was tried and convicted on that information. (*Id*. at p. 473.) On review, the California Supreme Court stated: "There is a wide difference between the offense of an assault with a deadly weapon upon John Doe and that of assault with a deadly weapon upon Richard Roe. The name of the party assaulted is a material element of the offense,

and common justice to the defendant demands that he be notified of the particular offense for which he stands committed." (*Ibid*.)

Lee Look, *supra*, 143 Cal. 216 held that it was the magistrate's duty to hold a defendant to answer for the offense proved, whatever the offense charged in the complaint may have been. (*Id*. at p. 219, citing *People v. Staples* (1891) 91 Cal. 23.) The information is required to follow the order of commitment rather than the complaint. (*Ibid*.) *Lee Look* stated that, to the degree *Christian* was inconsistent with this view, it must be considered overruled. (*Lee Look*, at p. 220.) An analysis of the magistrate's language on the order of commitment shows that Christian was held to answer for "the offense of assault with a deadly weapon," and the information charging him for the assault that had been proved was therefore valid.

We agree with the reasoning of *Griggs*, *supra*, 216 Cal.App.3d 734 that the naming of the assault victim is not a necessary element of the offense. We also conclude that, in the particular context of this case, there was no denial of due process. *Griggs* stated that due process requires that a defendant be advised of the charges against him so that he may have a reasonable opportunity to prepare his defense and so that he may "plead the judgment as a bar to any later prosecution for the same offense." (*Griggs*, at pp. 742-743.) As in *Griggs*, there was no question in the instant case regarding which of the minor's acts formed the basis of the assault charge. The petition adequately informed him of the charges he was facing in the context of the attack on several men in which he participated. Although the victim was not named and was unavailable as a witness, the minor nevertheless was able to cross-examine the witnesses who testified regarding the attack. The minor argued only that he was not the one with the broomstick and his offense was no more than a misdemeanor. He made no objection to the fact that the named victim, Cherinos, was not called to testify, and he presented no evidence regarding Cherinos. The allegation as sustained was sufficiently specific to prevent the minor from being prosecuted for the same offense at a later date. The amendment here, like that in *Man J.*, *supra*, 149 Cal.App.3d 475 was done to conform to proof and did not alter the

nature of the offense charged. (*Id*. at p. 481.) We conclude the juvenile court's amendment of the petition did not deny the minor due process.

III. Conditions of Probation

The minor argues that his probation conditions should be modified to inject an element of knowledge into the prohibitions against associating with people who use drugs, being in places where drugs are being used, and riding in stolen cars. He also contends the challenged conditions impinge on the exercise of his constitutional right to travel and his freedom of association.

Respondent argues that the element of knowledge is "fairly implied" in the challenged conditions and, therefore, minor's proposed modifications are unnecessary.

The juvenile court has wide discretion in selecting suitable probation conditions. (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 622.) Juvenile probation conditions may be broader than those pertaining to adults because juveniles are deemed to be more in need of guidance and supervision, and a minor's constitutional rights are more constricted than an adult's. This is because the state stands in the shoes of the parent when it has jurisdiction over a minor. (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) However, the juvenile court's discretion is not limitless. (*In re Bernardino S*., at p. 622.) Section 730, subdivision (b) of the Welfare and Institutions Code states that the trial court may administer "any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced."

Appellate courts have found certain probation conditions to be overbroad and have modified them accordingly. (See *In re Justin S*. (2001) 93 Cal.App.4th 811, 816 [probation condition prohibiting the appellant from associating with gang members]; *People v. Lopez* (1998) 66 Cal.App.4th 615, 628-629 (*Lopez*) [same]; and *People v. Garcia* (1993) 19 Cal.App.4th 97, 102 [probation condition prohibiting association with users and sellers of narcotics, felons, and ex-felons].) In each of these cases, the probation conditions were modified on appeal by adding the element of the minors knowledge.

In the instant case, perusal of the probation conditions attached to the dispositional minute order reveals that there are two conditions of probation dealing with drugs. Condition 21 provides: "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where users congregate." Condition 22 provides: "Do not associate with persons known to be users or sellers of narcotics/controlled substances, except with the prior written permission of the Probation Officer." These two conditions, read in context, include a sufficient element of knowledge so as not to be vague and do not impinge on the minor's freedom of association.

There is no written condition prohibiting the minor from riding in stolen cars, although the juvenile court articulated such a condition at the end of the dispositional hearing. If the minutes do not reflect the juvenile court's judgment, the error is clerical, and the record may be amended at any time to correct the error. (*People v. Hartsell* (1973) 34 Cal.App.3d 8, 13.) In an abundance of caution, while ordering the minute order documenting the probation conditions to be amended, we will modify the condition to include a knowledge element. (See *People v. Lopez*, *supra*, 66 Cal.App.4th at pp. 628-629.)

DISPOSITION

We direct the juvenile court to amend the conditions of probation in its January 16, 2002, minute order to add the following condition in line No. 30: "Do not drive or ride in any motor vehicle that you know to be stolen." In all other respects, the order appealed from is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

_____, J.
ASHMANN-GERST

We concur:

_____, P.J.
BOREN

_____, J.
DOI TODD